

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. See 86 Ill. Adm. Code 130.220. (This is a GIL).

April 20, 2000

Dear Xxxxx:

This letter is in response to your letter dated March 20, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I have been referred to this address by others in the Department of Revenue because I have called to inquire about the tax I paid in total at the inception of a car lease. Now that I have moved from Illinois and will be paying a monthly tax to the State of Arizona, I feel I should receive a tax rebate for the payment made for time I will not be driving a leased car in Illinois.

On June 22, 1998 I signed a three-year lease with COMPANY. I was told that the State of Illinois required an up front payment of tax, rather than receiving a monthly tax payment, as is done in other states. Therefore, I paid \$\$\$\$ in taxes to Illinois. For the 36 month lease, this works out to \$\$\$\$ per month. (\$\$\$\$ by 36 = \$\$\$)

In January, 2000 I moved to Arizona and had my car titled in Arizona, thus COMPANY now must charge me additional each month on my lease payment so COMPANY has the tax money to meet the required payment to Arizona. People at COMPANY told me to contact Illinois for a rebate since I paid for the total lease up front and since I would be paying double taxes for the remainder of the lease. As the COMPANY person told me, 'no one should have to pay double taxes for the same lease.'

Therefore, since my lease runs through June of 2001, since I moved from Illinois in January, 2000, and since I paid tax to Illinois for time I will not be in the state to use services, I am sure that I am entitled to a tax refund. Since my lease runs for 16 more months when I will not be in Illinois, I calculate the tax refund to be \$\$\$\$ per month for 16 months which is \$\$\$\$.

Because I know you agree that I should not pay double state taxes and since COMPANY said they could not give me the rebate because Illinois has all the money, I respectfully request the rebate of \$\$\$\$.

My COMPANY lease account is ####. You may need that number to verify the prior payment of \$\$\$\$ to the State of Illinois.

I await your reply and a rebate check. Thank you for your time and consideration.

As you are aware, the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. The lease you describe in your letter appears to be a true lease.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3) enclosed.

Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

In the situation you describe, COMPANY owed Illinois Use Tax as the lessor of the vehicle. You as a lessee did not have a tax liability to the State of Illinois. If you reimbursed COMPANY for their tax liability, it was due to a contractual arrangement between you and them. The Department can only refund taxes paid to it under a mistake of fact or law to the taxpayer that bore the burden of the tax (e.g. COMPANY). In your case, the Use Tax was properly due and paid by COMPANY; therefore, a credit for taxes paid cannot be given to them. Please note that Arizona may give credit for taxes properly paid to another state.

April 20, 2000

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.